IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1280 of 1983

Date of Decision: 18.04.2007

M/s Kali Charan Karam Chand ..Appellant

Vs.

M/s J.R.Traders and Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Sandeep Khunger, Advocate,
for the appellant.

Mr.Anurag Chopra, Advocate,
for the respondents.

Vinod K.Sharma,J. (Oral)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate court vide which decree passed by the learned trial court for the recovery of Rs.4875.45P along with future interest at the rate of 6 per cent per annum on the principal amount of Rs.1995.05P has been ordered to be set aside.

The plaintiff-appellant M/s Kali Charan Karam Chand filed a suit against M/s J.R.Traders, defendant No.1, Umesh Dutt, defendant No.2, Smt.Kaushalya Devi, defendant No.3, M/s Nathu Ram Sudesh Kumar,

defendant No.4, Nathu Ram and Tirat Ram, defendants No.5 and 6. It was pleaded in the plaint that on 21.12.1970, M/s Nathu Ram Sudesh Kumar, defendant No.4 started purchasing paddy from the plaintiffs on credit. It was claimed that M/s Nathu Ram Sudesh Kumar had agreed to pay interest at the rate of 18 per cent per annum on the amount remaining unpaid after 4 days on their falling due. It was claimed that otherwise also this was the prevalent rate of interest as per mercantile and commercial usage and custom. It was further claimed that from 21.10.1972 to 23.1.1973 the firm Nathu Ram Sudesh Kumar purchased paddy from the plaintiff and made various payments in respect thereof in account. Last payment is said to have been made on 24.9.1971 by means of a cheque. The details of the purchase are said to have been entered in the books of account of the plaintiff and copies of the relevant entries thereof were mentioned in Schedule-A and similarly copies of the entries regarding payment were shown in Schedule-B attached with the plaint. It was claimed that after the receipt of last payment, a sum of Rs.1995.05P was due from the defendants as balance for paddy supplied by the plaintiff. It was claimed that along with interest at the rate of 18 per cent per annum, a sum of Rs.4320.60P was due from M/s Nathu Ram Sudesh Kumar but by calculating the same at the rate of 12 per cent per annum an amount of Rs.2880.40P along with principal amount was claimed. It was further claimed that Jagdish Ram deceased who was partner of M/s Nathu Ram Sudesh Kumar as also in M/s J.R.Traders acted on behalf of both the firms and undertook to oblige M/s J.R.Traders to pay the said amount as also interest due from M/s Nathu Ram Sudesh Kumar and issued a cheque dated 10.1.1972 for and on behalf of M/s J.R.Traders. The cheque was said to have been issued in favour of the

plaintiff for a sum of Rs.1995.05 as part payment of the amount and balance amount was agreed to be paid within a month. Payment of said cheque was said to have been stopped due to dishonest and mala fide intention of M/s J.R.Traders, defendant No.1. It was on account of the death of Jagdish Ram that his son Umesh Dutt was impleaded as defendant. It was also claimed that in spite of demand having been raised the amount was not paid. Therefore, the present suit was filed.

Written statement was filed only by Ms. Kausalaya Devi who contested the suit. She claimed that Umesh Dutt being minor could not be sued as partner for payment of debt of the firm. It was further claimed that though the plaintiff has filed a suit for the recovery of Rs.1995.05P to be due towards the balance payment but Schedule-A and Schedule B attached with plaint show that balance was Rs.2000/-. The suit was also claimed to be time barred. It was further claimed that a sum of Rs.2000/- which was shown to be a loan on 17.5.1971 could not be said to be the price of paddy and therefore, the loan advanced to Nathu Ram could be said to be his liability and not of remaining defendants. It was further claimed that cheque of Rs.1995.05P was issued by M/s J.R.Traders in favour of the plaintiff only by way of loan advanced to M/s Natu Ram Sudesh Kumar for the payment of debt due from them to the plaintiff with a clear stipulation that the same shall be paid by M/s J.R.Traders, defendant No.1 after collection to be paid by M/s Nathu Ram Sudesh Kumar. As this was not done payment of the cheque was stopped. It was further claimed that M/s Nathu Ram Sudesh Kumar was not a partnership concern but only a business name of whose sole proprietor was Nathu Ram and for that reason the other defendants did not have any concern or connection with M/s

Nathu Ram Sudesh Kumar and therefore, could not be liable for the debt of M/s Nathu Ram Sudesh Kumar.

On the pleadings of the parties the learned trial court framed the following issues:-

1. Whether Kaushalya Devi and Jagdish Ram deceased, now represented by Umesh Dutt are the partners of the business concern known and styled as Nathu Ram Sudesh Kumar?OPP
2. If issue No.1, is proved, whether Umesh Dutt minor can be held liable for the amount in suit? OPP
3. Whether the suit is within time? OPP
4. Whether the item of loan dated 17.5.71 is liable to be paid by the defendants, if so, by whom? OPP
5. Whether the plaintiff is entitled to interest, if so what effect? OPP
6. Relief.

The learned Trial court was pleased to decree the suit primarily on the ground that it was proved on record that the plaintiff had supplied paddy to M/s Nathu Ram Sudesh Kumar which was actually being run by M/s Shakti Rice and General Traders. Learned trial court further held that it was within the right of the plaintiff to have adjusted the loan of Rs.2000/- out of the payment received from the defendant M/s Nathu Ram Sudesh Kumar and therefore, the balance amount as depicted in the cheque was due and payable and thus, decreed the suit.

Learned lower appellate court has reversed the findings recorded by the learned trial court by holding that the plaintiff had failed to

prove the advancement of loan of Rs.2000/- to M/s Nathu Ram Sudesh Kumar which was said to have been adjusted so as to raise the claim of Rs.1995.05 along with interest as balance payment of the paddy. In case the adjustment of Rs.2000/- received by the plaintiff was not to be allowed then it was not to be disputed that no amount was due against the purchase of paddy. Learned lower appellate court in view of the pleadings and evidence brought on record came to the conclusion that the learned trial court had made out a new case for the plaintiff which was beyond the pleadings. Learned lower appellate court observed that though a specific plea of advancement of loan was taken the plaintiff but failed to prove the same by producing Munim whom the said loan was alleged to have been given against Parchi nor any documentary evidence has been produced on record. Learned lower appellate court further noticed that cheque issued by M/s J.R.Traders, defendant No.1 could not be said to be against the liability of M/s Nathu Ram Sudesh Kumar and therefore, the learned trial court was wrong in coming to the said conclusion. Finding recorded by the learned lower appellate court is based on pleadings and the evidence led by the parties and is not open to challenge in the regular second appeal.

No question of law much less substantial question of law arises in this appeal for adjudication by this court.

Dismissed.

April 18,2007 **(Vinod K.Sharma)**
rp **Judge**